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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1152

SOUTHERN PACIFIC COMPANY, a corporation,
Appellant,

vs.

THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,
Appellee.

On Appeal from the United States District Court for the Northern District of California

Motion to Affirm

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Motion to Affirm

Appellee, the Public Utilities Commission of the State of California ("Commission"), hereby moves to affirm the judgment of the District Court on the grounds that the questions presented are so insubstantial as to not warrant any further argument.

OPINIONS BELOW

The Opinion and Order of the Public Utilities Commission of the State of California in Decision No. 74006 are dated April 16, 1968. Copies thereof are printed in Appendix A of appellant's Jurisdictional Statement. The final order of the Supreme Court of the State of California,

S.F. No. 22610, issued September 25, 1968, which reviewed the Commission's Order, is reported in the Advance California Reports, 69 A.C. No. 9, page 1 of the Minutes, and is printed in Appendix C of appellant's Jurisdictional Statement. The Order of the United States District Court for the Northern District of California granting appellee's Motion to Dismiss was issued November 14, 1968. A copy of said Order is printed in Appendix B of appellant's Jurisdictional Statement. Notice of Appeal was timely filed January 14, 1969. Appellant's Jurisdictional Statement was received by appellee on March 27, 1969.

JURISDICTION

Appellant seeks to invoke the jurisdiction of this Court under 28 U.S.C. § 1253 which provides for the direct appeal to the United States Supreme Court from a decision rendered by a three-judge district court constituted under 28 U.S.C. §§ 2281 and 2284.

STATUTES INVOLVED

Certain of the statutes involved, namely Sections 1756-1760 of the California Public Utilities Code, are set forth at pages 3-5 of appellant's Jurisdictional Statement. Other statutes involved are Article XII, Section 22, of the California Constitution; Sections 312, 2110, and 2113 of the California Public Utilities Code; Sections 1209-1222 of the California Code of Civil Procedure; and Sections 166 of the California Penal Code, all of which are attached hereto as Appendix A.

QUESTIONS PRESENTED

The questions, as set forth by appellant, are not accurately or correctly presented. Based upon the record before the various tribunals involved herein, and the decisions of

those tribunals, the questions before this Court may be stated as follows:

(1) Is the California Supreme Court required to bring up the entire record before it decides whether a writ of review should be issued or not?

(2) Is a federal district court required to review the entire record of a proceeding before a state regulatory agency before it determines that the constitutional issues are so insubstantial as not to require the convening of a three-judge court?

(3) Can a state agency with plenary powers derived directly from the Constitution of the State of California, including the power to punish for contempt, exercise its constitutional contempt power (implemented by its statutory contempt power) to adjudge a party guilty of *civil contempt,* and impose *civil sanctions* pursuant to such judgment, after a hearing has been afforded such party, without violating the due process of law requirements of the Fourteenth Amendment to the Federal Constitution?

(4) Is a trial by jury necessary, in order to fulfill the due process requirements of the Fourteenth Amendment to the Constitution of the United States, in a state administrative agency proceeding before a party can be adjudged in civil contempt for failure to obey an order of that agency?

STATEMENT OF THE CASE

Appellant, a common carrier by railroad, operates a commuter passenger service between San Francisco and San Jose, California. It sought to charge parking fees for automobiles using its parking lots adjacent to the stations along the route between those two points. The Commission issued a temporary restraining order on October 10, 1967, directing petitioner to refrain from collecting the parking

charges pending further order of the Commission. Appellant sought a writ of prohibition from the California Supreme Court to enjoin the Commission from enforcing the restraining order, but the writ was denied November 8, 1967. Appellant also sought a writ of review of the Commission's order from the California Supreme Court which was denied December 20, 1967.

In a third proceeding before the California Supreme Court appellant filed a petition for a writ of prohibition to enjoin the Commission from entertaining a contempt proceeding based on appellant's alleged noncompliance with the October 10th order. Simultaneously appellant sought judicial stay of the order. This petition for the writ and stay was denied November 29, 1967.

The Commission, in the meantime, had issued its order in Decision No. 73352, dated November 14, 1967, which directed appellant to show cause why it should not be held in contempt for refusal to comply with the Commission's order, which appellant admits (Juris. Stat. p. 4) was demonstrated by its actions during the period of November 2 through November 8, 1967. The contempt hearing was held before a Commissioner and Examiner on November 30 and December 21, 1967 in the usual manner pursuant to authority conferred by the California Constitution in Article XII, Section 22, and in California Public Utilities Code Section 2113. On April 16, 1968, the Commission issued its decision (Decision No. 74006, Appendix A, Juris. Stat.) finding appellant in contempt of the Commission and ordering it to pay a fine of $22,000. Apellant filed a petition for rehearing on April 26, 1968, which was denied by the Commission by Decision No. 74174, dated May 28, 1968.

Pursuant to Sections 1756-1770, California Public Utilities Code, appellant petitioned the California Supreme

Court for a writ of review, contending *inter alia* that: (1) the delegation of *criminal contempt* powers to state administrative agencies was a *per se* violation of appellant's right to due process of law under the Fourteenth Amendment of the United States Constitution and (2) that the finding of appellant in contempt of the Commission, without affording appellant a trial by jury, was in contravention of the Fourteenth Amendment of the Constitution of the United States.

On September 25, 1968, the California Supreme Court issued its order affirming the Commission's decision holding appellant in contempt by denying appellant's petition for writ of review. Appellant then filed an action in the Federal District Court of the Northern District of California, No. 50166, wherein it sought, by convening a three-judge court, to have the Commission's constitutional and statutory contempt powers declared null and void. This suit was dismissed on November 10, 1968.

Thereafter, appellant filed two separate Jurisdictional Statements seeking this Court's consideration in the first (No. 1050) of the California Supreme Court's denial of a writ of review and in the present docket of the Federal District Court's order granting the motion to dismiss.

ARGUMENT

I

Appellant's contention that the failure of the California Supreme Court to bring before it the record of the Commission's proceedings denied appellant due process is completely unwarranted and not substantiated by the cases cited therein. Appellant seems to imply that Section 1760 of the California Public Utilities Code grants a petitioning party the right to a trial *de novo* before the California

Supreme Court. However, contrary to appellant's reasoning, the effect of Section 1760 is that the "determination of the constitutional question [by the Commission] shall not be final," and within that context the California Supreme Court is free to rule on the constitutional issue presented.

The fallacy of appellant's argument is that there is no rule of procedure which prevents or restricts the petitioner from attaching or appending any or all of the record of the Commission's proceeding to the petition for writ of review. Indeed, dissatisfied parties seeking review of Commission orders at times include substantial portions of the Commission record in their petitions for review. It does not appear feasible or expedient to require a state supreme court to bring before it the entire record of an agency proceeding prior to deciding whether the writ should be issued.

It is also anomalous for appellant (petitioner before the California Supreme Court) to have sought review before the California Supreme Court and now, disappointed in the outcome of that proceeding, to assert before this Court that the California Supreme Court erred in not considering matters before the Commission which appellant could have easily brought before that Court.[1]

II

In reference to appellant's second "question presented," it is not clear exactly what contention appellant is attempting to bring thereby before this Court. If appellant's contention is that its appeal from the California Supreme

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1. In fact, appellant's petition for writ of review before the California Supreme Court comprised more than 85 pages, which included a memorandum of points and authorities, several exhibits, and several excerpts from the Commission record.

Court is an inadequate remedy because the record of the Commission's proceeding was not before the California Supreme Court, then appellant, as set forth above, has only itself to blame for the "inadequateness" of its remedy.

If, on the other hand, it is appellant's contention that the federal district court should have reviewed the record of the Commission proceedings, then appellant has completely misconstrued the purpose of a three-judge court constituted under 28 U.S.C., Sections 2281 and 2284. The purpose of a three-judge court is to provide a responsible forum for an authoritative determination in the litigation of suits, which, if successful, would render void state statutes embodying important state policies. (*Swift & Co. v. Wickham,* 382 U.S. 111, 86 S. Ct. 258, 15 L. Ed. 2d 194 (1965); *Zemel v. Rusk,* 381 U.S. 1, 85 S. Ct. 1271, 14 L. Ed. 2d 179 (1965).)

The convening of a three-judge court is not neeessary when the claim of unconstitutionality is "wholly insubstantial, legally speaking, nonexistence," or, in other words, essentially fictitious. (*Bailey v. Patterson,* 369 U.S. 31, 82 S. Ct. 549, 7 L. Ed. 2d 512 (1962); *Ex parte Poresky,* 290 U.S. 30, 54 S. Ct. 3, 78 L. Ed. 152 (1933).) The proceeding before the federal district court below more than satisfied the due process requirements, in that when a motion is made to convene a three-judge court, one judge determines if there is some plausible chance of success. If this determination is in the affirmative, then the constitutional issues are presented to the three-judge court. (*Ex parte Poresky, supra; Glancy v. Parole Bd. of Mich. Dept. of Corrections,* 287 F. Supp. 34 (D.C. Mich., 1968); *Lamont v. Commissioner of Motor Vehicles,* 269 F. Supp. 880 (D.C. N.Y. 1967).) In the proceeding below, *three* judges heard appellant's motion to convene a three-judge court, and there-

after dismissed the motion. It can only be assumed that the three judges determined that the constitutional issues were so insubstantial as to not warrant further hearing.

It appears that appellant was desirous of having the record of the Commission proceedings brought before both the California Supreme Court and the federal district court because of the alleged bias of one commissioner. In an attempt to illustrate this alleged bias, appellant extracted from the Commission record a statement by that commissioner (this excerpt appears at page 10 of appellant's Jurisdictional Statement), but in so doing appellant has taken this statement completely out of context.[2]

It is well settled in California that such opinions, expressed from the bench, do not constitute bias or prejudice which would require disqualification in order to conform with the due process requirements.

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2. "Examiner Daly: But out of curiosity Mr. Smith, I would like to have a statement from you as to what the status of these lots is at the present time.

"Mr. Smith: The status of the lots at the present time is the same as it was on October 10 when the Commission first purported to act, namely, that for those lots that a parking, pay parking program has been instituted, charges still being collected. The program, however, is frozen as of October 10th.

* * *

"Commissioner Bennett: So, you are disregarding the Commission's order? I would like it yes or no, because the question is clear. You are disregarding the Commission's order, are you not?

"Mr. Smith: Mr. Commissioner, when you put out a valid order we will obey.

"Commissioner Bennett: You are disregarding this order which you determined is invalid?

"Mr. Smith: We have—

"Commissioner Bennett: You do not consider yourself in contempt of this Commission?

"Mr. Smith: No, sir, we do not.

"Commissioner Bennett: Well, so far as I am concerned, I would recommend to the full Commission that we find the Southern Pacific in full contempt; but we will take that up with the Commission tomorrow." (This is the only part of the record that appellant ever quotes.)

> "From these authorities the rule appears to be that when the state of mind of the trial judge appears to be adverse to one of the parties but is based upon actual observance of the witnesses and the evidence given during the trial of an action, it does not amount to that prejudice against a litigant which disqualifies him in the trial of the action. . . ."

(*Kreling v. Superior Court,* 25 Cal. 2d 305, 312 (1944); *Huntington v. Crowley,* 64 Cal. 2d 647 (1966); see also *Federal Trade Com. v. Cement Institute,* 333 U.S. 683, 68 S. Ct. 793, 92 L. Ed. 1010 (1947).)

In any event an allegation that bias or prejudice has denied appellant its constitutional rights is of itself no basis to convene a three-judge court. The purpose of a three-judge court, as stated above, is that *one* judge may not have the power to declare a state statute or order unconstitutional. However, a distinction is made between the unconstitutionality of a statute as generally applied, (*Phillips v. U.S.,* 312 U.S. 246, 61 S. Ct. 480, 85 L. Ed. 800 (1940)), and where the attack is on the unconstitutionality of the result obtained by the use of such state statute. (*Overy v. U.S.,* 316 U.S. 486, 62 S. Ct. 1122, 86 L. Ed. 1616 (1942).) In the latter instance the convening of a three-judge court is not proper.

III

In one broad sweep, appellant is seeking to strike down the contempt powers of the Commission conferred upon it by constitutional and statutory provisions. In support thereof, appellant has reached back 75 years for the dictum of a case (*Interstate Commerce Commission v. Brimson,* 154 U.S. 447, 485 (1894)), which initiated the "spirit of decisions" of this Court. However, appellant fails to

acknowledge that this Court in *Brimson* upheld the I.C.C.'s right to petition to enforce its own subpoena in a court, and to compel Brimson to testify, in order that the agency might be aided in carrying out the duties imposed on it by Congress.

Though jurisdiction in federal contempt matters arising from federal administrative orders has now been lodged with the federal courts by statute, this procedure has merely resulted in the federal court determining whether or not the administrative agency has performed its functions properly. If so, the federal court must enforce the agency's orders. (*National Labor Relations Board v. Warren Co.*, 350 U.S. 107, 112-113 (1955).)

Contrary to apellant's interpretation of the dictum in *Brimson*, this Court has long approved the grant of judicial powers to state administrative agencies. (*Consolidated Rendering Co. v. Vermont*, 207 U.S. 541, 552 (1908); *Carfer v. Caldwell*, 200 U.S. 293 (1906).) By state constitutional and statutory provisions the Commission has been granted the power to "punish for contempt in the same manner and to the same extent as courts of records . . . ." (Calif. Const., Art. XII, § 22; Public Utilities Code §§ 312 and 2113.) Thus, it is evident, and it has been so held, that the Commission is not strictly an administrative and legislative tribunal, but rather it does "possess well established and well understood judicial power." (*People v. Western Air Lines, Inc.*, 42 Cal. 2d 621, 632, 268 P. 2d 723 (1954), dismissed 348 U.S. 859, 75 S. Ct. 87, 99 L. Ed. 677.)

IV

According to appellant, the "spirit of decisions" created by *Brimson* was culminated by this Court's decisions in *Bloom v. Illinois*, 391 U.S. 194, 88 S. Ct. 1477, 20 L. Ed 2d

522 (1968), and *Duncan v. Louisiana,* 391 U.S. 145, 88 S. Ct. 1444, 20 L. Ed. 2d 491 (1968), requiring a jury trial in criminal proceedings. It is appellant's contention that this requirement of a jury trial should be extended to the Commission's contempt proceedings. But again appellant's proposition cannot be substantiated, for appellant has failed to recognize the basic distinction between civil and criminal contempt. This distinction is provided by statute in California, whereby the courts prosecute civil contempt proceedings under California Code of Civil Procedure Sections 1209-1222 and criminal contempt proceedings under California Penal Code Section 166. The former provisions are not for the punishment of an offense against the state but rather to implement the "inherent power of the court to conduct the business of the court and enforce the lawful orders of the court." (*Pacific Tel. & Tel. Co. v. Superior Court,* 265 A.C.A. 985, 987 (1968), citing *Bridges v. Superior Court,* 14 Cal. 2d 464, 94 P. 2d 983 (1939).)

This same basic distinction between civil and criminal contempt proceedings is made in regard to the contempt powers granted to the Commission. If the Commission had intended to proceed against appellant in a criminal action, it would have asked a district attorney to proceed to prosecute for the violation of the Commission's orders, which is made a misdemeanor by Section 2110 of the California Public Utilities Code, and which sets forth a definite punishment of a fine ($1,000) or imprisonment (not to exceed one year), or both.

Even if *Bloom* and *Duncan* were held applicable to the Commission's order, this Court held in a subsequent case that the principle referred to in those cases would not be applied retroactively. (*De Stefano v. Woods,* 392 U.S. 631, 634-635, 20 L. Ed. 2d 1308 (1968).)

"For these reasons we will not reverse state convictions for failure to grant jury trial where trials began prior to May 20, 1968, the date of this Court's decision in Duncan v. Louisiana and Bloom v. Illinois."[3]

CONCLUSION

Appellant, in prosecuting this appeal and the appeal from the California Supreme Court in No. 1050, has attempted to relate interchangeably the issues presented in the two appeals. In fact, for two of its arguments, appellant's Jurisdictional Statement attempts to incorporate part of the Jurisdictional Statement in No. 1050. Apparently, appellant has recognized the futility of these appeals, because in referring to the appeal from the California Supreme Court appellant has completely disregarded the purpose of a three-judge court, and that the process of appeals from the latter court and a state supreme court are two very separate and distinct remedies which do not encompass the same issues.

Appellant acknowledges [at page 13 of its Jurisdictional Statement] that one of the reasons the federal district court may have dismissed its action was because of the availability of an already existing avenue of judicial review. One of the functions of a three-judge court is to expedite important litigation and to provide a more authoritative forum when considering the constitutionality of a state statute or policy. (*Swift & Co. v. Wickham,* 382 U.S. 111, 86 S. Ct. 258, 15 L. Ed. 2d 194 (1965).) The attempt to convene a three-judge court has not expedited litigation, nor could it have provided a more authoritative forum than a direct appeal to the United States Supreme Court from the California Supreme Court.

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3. The order by the Commission finding appellant in contempt was issued April 16, 1968.

It thus becomes clearly evident that appellant is "grasping at straws," searching for some legal remedy that does not exist. Appellant for over a year and a half has attempted to invoke the jurisdiction of any and every forum that would listen to it, and in the process each forum has summarily dismissed appellant's suits. Appellant has at last reached the final arbiter and again it can only be simply stated: Appellant has not presented any substantial constitutional question that warrants further hearing. Therefore, the decision of the federal district court should be affirmed.

Respectfully submitted,

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(Appendix A Follows)

Appendix A

28 United States Code

§ 1253. Direct appeals from decisions of three-judge courts

Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges.

§ 2281. Injunction against enforcement of State statute; three-judge court required

An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title.

§ 2284. Three-judge district court; composition; procedure

In any action or proceeding required by Act of Congress to be heard and determined by a district court of three judges the composition and procedure of the court, except as otherwise provided by law, shall be as follows:

(1) The district judge to whom the application for injunction or other relief is presented shall constitute one member of such court. On the filing of the application, he shall immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall

be a circuit judge. Such judges shall serve as members of the court to hear and determine the action or proceeding.

(2) If the action involves the enforcement, operation or execution of State statutes or State administrative orders, at least five days notice of the hearing shall be given to the governor and attorney general of the State.

* * * * * * *

Such notice shall be given by registered mail or by certified mail by the clerk and shall be complete on the mailing thereof.

(3) In any such case in which an application for an interlocutory injunction is made, the district judge to whom the application is made may, at any time, grant a temporary restraining order to prevent irreparable damage. The order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the full court. It shall contain a specific finding, based upon evidence submitted to such judge and identified by reference thereto, that specified irreparable damage will result if the order is not granted.

(4) In any such case the application shall be given precedence and assigned for a hearing at the earliest practicable day. Two judges must concur in granting the application.

(5) Any one of the three judges of the court may perform all functions, conduct all proceedings except the trial, and enter all orders required or permitted by the rules of civil procedure. A single judge shall not appoint a master or order a reference, or hear and determine any application for an interlocutory injunction or motion to vacate the same, or dismiss the action, or enter a summary or final judgment. The action of a single judge shall be reviewable by the full court at any time before final hearing.

A district court of three judges shall, before final hearing, stay any action pending therein to enjoin, suspend or restrain the enforcement or execution of a State statute or order thereunder, whenever it appears that a State court of competent jurisdiction has stayed proceedings under such statute or order pending the determination in such State court of an action to enforce the same. If the action in the State court is not prosecuted diligently and in good faith, the district court of three judges may vacate its stay after hearing upon ten days notice served upon the attorney general of the State.

California Public Utilities Code

312. The commission and each commisisoner may issue writs of summons, subpoenas, warrants of attachment, warrants of commitment, and all necessary process in proceedings for contempt, in like manner and to the same extent as courts of record. The process issued by the commission or any commissioner, extends to all parts of the State and may be served by any person authorized to serve process of courts of record, or by any person designated by the commission or a commissioner. The person executing any such process shall receive such compensation as is allowed by the commission, not to exceed the fees prescribed by law on August 8, 1915, for similar services, and such fees shall be paid in the same manner as provided in this part for payment of the fees of witnesses.

2110. Every public utility and every officer, agent, or employee of any public utility, who violates or fails to comply with, or who procures, aids, or abets any violation by any public utility of any provision of the Constitution of this state or of this part, or who fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, or who procures, aids, or

abets any public utility in such violation or noncompliance in a case in which a penalty has not otherwise been provided is guilty of a misdemeanor and is punishable by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

2113. Every public utility, corporation, or person which fails to comply with any part of any order, decision, rule, regulation, direction, demand, or requirement of the commission or any commissioner is in contempt of the commission, and is punishable by the commission for contempt in the same manner and to the same extent as contempt is punished by courts of record. The remedy prescribed in this section does not bar or affect any other remedy prescribed in this part, but is cumulative and in addition thereto.

California Code of Civil Procedure

§ 1209. Acts or omissions constituting

The following acts or omissions in respect to a court of justice, or proceedings therein, are contempts of the authority of the court:

1. Disorderly, contemptuous, or insolent behavior toward the judge while holding the court, tending to interrupt the due course of a trial or other judicial proceeding;

2. A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceedings;

3. Misbehavior in office, or other wilful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person, appointed or elected to perform a judicial or ministerial service;

4. Abuse of the process or proceedings of the court, or falsely pretending to act under authority of an order or process of the court;

5. Disobedience of any lawful judgment, order, or process of the court;

6. Rescuing any person or property in the custody of an officer by virtue of an order or process of such court;

7. Unlawfully detaining a witness, or party to an action while going to, remaining at, or returning from the court where the action is on the calendar for trial;

8. Any other unlawful interference with the process or proceedings of a court;

9. Disobedience of a subpena duly served, or refusing to be sworn or answer as a witness;

10. When summoned as a juror in a court, neglecting to attend or serve as such, or improperly conversing with a party to an action, to be tried at such court, or with any other person, in relation to the merits of such action, or receiving a communication from a party or other person in respect to it, without immediately disclosing the same to the court;

11. Disobedience by an inferior tribunal, magistrate, or officer, of the lawful judgment, order, or process of a superior court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate, or officer.

No speech or publication reflecting upon or concerning any court or any officer thereof shall be treated or punished as a contempt of such court unless made in the immediate presence of such court while in session and in such a manner as to actually interfere with its proceedings.

§ 1211. Summary punishment; order; affidavit or statement of facts

When a contempt is committed in the immediate view and presence of the court, or of the judge at chambers, it may be punished summarily; for which an order must be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as therein prescribed.

When the contempt is not committed in the immediate view and presence of the court, or of the judge at chambers, an affidavit shall be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators, or other judicial officers.

§ 1212. Warrant of attachment; issuance; order to show cause; warrant of commitment

When the contempt is not committed in the immediate view and presence of the court or judge, a warrant of attachment may be issued to bring the person charged to answer, or, without a previous arrest, a warrant of commitment may, upon notice, or upon an order to show cause, be granted; and no warrant of commitment can be issued without such previous attachment to answer, or such notice or order to show cause.

§ 1218. Determination of guilt; fine; imprisonment

Upon the answer and evidence taken, the court or judge must determine whether the person proceeded against is guilty of the contempt charged, and if it be adjudged that he is guilty of the contempt, a fine may be imposed on him not exceeding five hundred dollars ($500), or he may be imprisoned not exceeding five days, or both; provided, however, that in justice courts the judge may punish by

fine or imprisonment or both, such fine not to exceed, in any case, one hundred dollars ($100), and such imprisonment one day; the conviction, specifying particularly the offense, and the judgment thereon, must be entered in the docket.

§ 1222. Conclusiveness of judgments and orders

The judgment and orders of the court or judge, made in cases of contempt, are final and conclusive.

California Penal Code

§ 166. Criminal contempts; conduct constituting

CRIMINAL CONTEMPTS. Every person guilty of any contempt of Court, of either of the following kinds, is guilty of a misdemeanor:

1. Disorderly, contemptuous, or insolent behavior committed during the sitting of any Court of justice, in immediate view and presence of the Court, and directly tending to interrupt its proceedings or to impair the respect due to its authority;

2. Behavior of the like character committed in the presence of any referee, while actually engaged in any trial or hearing, pursuant to the order of any Court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law;

3. Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of any Court;

4. Willful disobedience of any process or order lawfully issued by any Court;

5. Resistance willfully offered by any person to the lawful order or process of any Court;

6. The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question;

7. The publication of a false or grossly inaccurate report of the proceedings of any Court;

8. Presenting to any Court having power to pass sentence upon any prisoner under conviction, or to any member of such Court, any affidavit or testimony or representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon such prisoner, except as provided in this Code.

California Constitution

Article XII

Sec. 22.

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The commisison shall have the further power to examine books, records and papers of all railroad and other transportation companies; to hear and determine complaints against railroad and other transportation companies; to issue subpenas and all necessary process and send for persons and papers; and the commisison and each of the commissioners shall have the power to administer oaths, take testimony and punish for contempt in the same manner and to the same extent as courts of record; the commission may prescribe a uniform system of accounts to be kept by all railroad and other transportation companies.